

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE**

|                                       |   |                               |
|---------------------------------------|---|-------------------------------|
| <b>IN THE MATTER OF THE</b>           | ) |                               |
| <b>APPLICATION OF SUEZ WATER</b>      | ) |                               |
| <b>DELAWARE INC. FOR A GENERAL</b>    | ) | <b>PSC DOCKET NO. 16-0163</b> |
| <b>INCREASE IN RATES AND FOR A</b>    | ) |                               |
| <b>REVISION TO ITS GENERAL TARIFF</b> | ) |                               |
| <b>(FILED FEBRUARY 5, 2016)</b>       |   |                               |

**DELAWARE PUBLIC SERVICE COMMISSION STAFF’S MOTION  
TO STAY PROCEEDING AND TO COMPEL SUEZ WATER DELAWARE INC. TO  
RESPOND TO DISCOVERY AND INFORMATION REQUESTS**

The Staff of the Public Service Commission of the State of Delaware (“Staff”), by and through its undersigned counsel, hereby moves to 1) stay the proceeding pending SWDE’s production of the requested documents and information; and 2) compel Suez Water Delaware Inc. (“SWDE”) to respond to various discovery and information requests. In support, Staff states the following:

**BACKGROUND**

1. On February 5, 2016, SWDE filed an application with the Public Service Commission of the State of Delaware (the “Commission”) seeking 1) a general increase in rates for water service of \$4,943,665, which is a 19.96% increase over existing rates; and 2) various changes to its water tariff (the “Application”).
2. On February 16, 2016, Staff confirmed in a Memorandum that SWDE’s Application met the Commission’s Minimum Filing Requirements under 26 *Del. Admin.* § 1002, Part A.

It is important to note that Staff's review to confirm that the Minimum Filing Requirements have been met is only a cursory review of the Application to confirm that the required schedules and information have indeed been filed; it is not a detailed review of the appropriateness or accuracy of the substantive information in the Application.

3. On March 22, 2016, the Commission adopted Order No. 8861, which opened this Docket No. 16-0163 to consider SWDE's application; approved interim rates; and appointed R. Campbell Hay as the Hearing Examiner to preside over this Docket.
4. As of May 25, 2016, Hearing Examiner Hay approved a Procedural Schedule agreed upon by all parties,<sup>1</sup> which included the following deadlines pertinent to this Motion:

|                    |  |
|--------------------|--|
| June 30, 2016      | Staff and DPA Initial Data Requests to SWDE due              |
| July 28, 2016      | SWDE's Response to Staff and DPA Initial Data Requests due   |
| August 19, 2016    | Staff and DPA Follow-Up Data Requests to SWDE due            |
| September 9, 2016  | SWDE's Response to Staff and DPA Follow-Up Data Requests due |
| September 26, 2016 | Staff and DPA to file Direct Testimony                       |
| October 6, 2016    | SWDE's Data Requests to Staff and DPA due                    |

5. On June 30, 2016, Staff filed its Initial Data Requests of SWDE.
6. SWDE provided responses to Staff's Initial Data Requests by the July 28, 2016 deadline.

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<sup>1</sup> The Delaware Division of the Public Advocate ("DPA") exercised its statutory right of intervention on March 11, 2016. No other parties have intervened.

7. On August 17, 2016, during a phone conversation<sup>2</sup> with Gary S. Prettyman, SWDE's Senior Director of Regulatory Business, Staff notified SWDE of certain deficiencies in the information provided by SWDE in its Application and Responses to Staff's Initial Data Requests. Specifically, Staff's review of SWDE's Application and Responses to Staff's Initial Data Requests revealed that SWDE had filed all schedules and information in its Application under a new proposed Cost Allocation Method ("CAM"),<sup>3</sup> one which has not been approved by the Commission.<sup>4</sup> SWDE also had not provided in its

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<sup>2</sup> The Commission's Rules of Practice and Procedure "encourage" "parties ... to pursue discovery through informal written or oral data requests or conferences," such as this and subsequent communications detailed in this Motion. 26 *Del. Admin.* § 1001-2.6.5.

<sup>3</sup> CAM refers to an arrangement where certain administrative functions for a utility and other regulated or unregulated affiliated entities are performed by a centralized affiliated entity, and the utility pays its share of the costs of the services being provided by the affiliated entity. Often, efficiencies and cost savings for the utility are realized in such an arrangement, but there is also a risk that a utility's ratepayers may end up subsidizing the costs of other affiliated entities. To ensure that ratepayers only pay an appropriate share of these shared services, it is essential that Staff review – and the Commission approve – the CAM to determine whether these shared costs are allocated fairly.

<sup>4</sup> To ensure that the costs of shared services are allocated appropriately, utilities such as SWDE must obtain Commission approval of any new cost allocation method. See 26 *Del. C.* §§ 307(a) ("[I]n any proceeding upon the motion of the Commission, or upon complaint, or upon application of a public utility, involving any proposed or existing rate of any public utility, or any proposed change in rates, the burden of proof to show that the rate involved is just and reasonable is upon the public utility."); 307(b) ("The public utility shall have the burden of proof in justifying every accounting entry of record questioned by the Commission which may suspend any charge or credit pending submission of satisfactory and sufficient proof in support thereof by the public utility."). Prior dockets where the Commission has considered CAMs proposed by utilities include Docket No. 10-247 (Commission review and approval of costs for shared services provided by Middlesex Water Company to Tidewater Utilities, Inc.); Docket No. 00-523 (Commissioner review and approval of CAM proposed by Chesapeake Utilities Company); Docket Nos. 98-424 and 99-528 (Commission review and approval of CAM proposed by Delmarva Power and Light Company). A proposed CAM may be considered in a standalone docket or within the context of a general rate application such as this, but the utility must provide sufficient information to allow the Commission to evaluate the proposed CAM, particularly because the utility must meet its burden of proof under 26 *Del. C.* § 307 in such proceedings.

Application or Responses to Staff's Initial Data Requests schedules and information under the current approved CAM, which would allow Staff to perform an analysis of the proposed CAM and make a recommendation to the Commission regarding whether the proposed CAM should be approved in the context of the Application. Staff specifically requested that SWDE provide a line-by-line comparison of the Management & Services ("M&S") costs under the current approved CAM and the new proposed CAM; detailed itemizations of the adjustments between the current and proposed CAM; and a breakdown of the M&S fees by business unit for every affiliate under the current approved CAM. SWDE represented that the information requested by Staff would be provided by the end of the week, which would have been by August 19, 2016.

8. On August 19, 2016, Staff filed its Follow-Up Data Requests of SWDE.
9. As of August 22, 2016, Staff had received no additional information from SWDE, which Staff had requested on August 17, 2016, and SWDE had committed to provide by August 19, 2016.
10. During the week of August 22, 2016, Counsel for Staff notified Counsel for SWDE by telephone that Staff had not received any of the information which Staff had requested on August 17, 2016, and SWDE had committed to provide by August 19, 2016. Counsel for SWDE represented that SWDE had already provided much of the information in its Application and Responses to Staff's Initial Data Requests. There was an agreement that Staff and SWDE would have a telephone conference during the week of August 29, 2016

to identify the information requested by Staff, which SWDE alleged it had already provided.

11. On September 1, 2016, Staff and SWDE conferred again by phone. During this phone conversation, SWDE reiterated that that it had already provided most, but acknowledged that it had not provided all of the information requested by Staff on August 17, 2016. SWDE represented that had not yet provided but would provide the requested information regarding the M&S fees by business unit for each affiliate under the current CAM and an update on the disposition of the CAM issue in PA, NY, and NJ, but that it was still completing its response. Staff asked SWDE to provide specific citations to the Application and Responses to the Initial Data Requests to indicate where the requested information could be found, and SWDE agreed to provide this information forthwith.

12. As of September 8, 2016, Staff still had not received any of the requested information from SWDE – including the citations to the information SWDE alleged it had already provided, the M&S fees by business unit for each affiliate under the current CAM, and an update on the disposition of the CAM issue in PA, NY, and NJ. Staff sent an email on September 8, 2016, specifically asking SWDE to provide the information requested on August 17 and September 1, 2016, by no later than September 12, 2016.

13. SWDE provided responses to Staff's Follow-Up Requests by the September 9, 2016 deadline.

14. On September 9, 2016, SWDE provided its first substantive response by email to Staff's requests of August 17 and September 1, 2016.
15. By September 13, 2016, Staff had completed its review of the information provided by email on September 9, 2016 and SWDE's Responses to Staff's Follow-Up Data Requests and determined that SWDE still had not provided the requested information.
16. Counsel for Staff notified Counsel for SWDE and the DPA on September 20, 2016 by email of Staff's intention to file this Motion to Stay Proceeding and to Compel Production due to SWDE's continued failure to provide the requested information. Counsel for Staff and Counsel for SWDE later spoke by phone where both agreed to schedule a call between Staff and SWDE on September 21, 2016, and that Counsel for SWDE would provide SWDE's availability for such a call.
17. Staff did not receive any proposed times for a call from SWDE on September 21, 2016, and late on September 21, 2016, Counsel for Staff provided additional clarification by email to SWDE of what information was outstanding. Staff, the DPA, and SWDE were able to schedule an in-person meeting, with several participants attending by phone, on the morning of September 23, 2016.
18. After a lengthy discussion at the September 23, 2016 meeting, SWDE agreed to provide the following information to Staff:

- A line-by-line comparison of the M&S costs under the old allocation method and the new allocation method and the detailed itemizations of the adjustments;
- All the MFR schedules in the rate case, including M&S, corporate assumptions, and financials for test period and test year, using the approved cost allocation method and adjustments based on those numbers;
- M&S fees by business unit with the prior, approved cost allocation method;
- An explanation of why SWDE changed its CAM and what deficiencies existed in the current, approved CAM;
- What costs were involved in implement the new CAM;
- Any cost-benefit studies performed concerning installation of new meters; and
- Updates on a rolling basis regarding the disposition of the CAM issue in Pennsylvania, New York, and New Jersey.

## **ARGUMENT**

### **A. The Hearing Examiner should stay further proceedings in this Docket until SWDE has produced the requested information.**

19. Staff respectfully requests that the Hearing Examiner stay further proceedings in this Docket, or more specifically, grant an extension of the September 26, 2016 deadline to file Direct Testimony, pending production of the requested information by SWDE. Staff would commit to file its Direct Testimony as soon as practicable after receiving all outstanding requested information from SWDE and would agree to a date certain for filing its Direct Testimony after SWDE has completed production. After Staff files its

Direct Testimony, adjustments to any subsequent deadlines, such as the deadline for SWDE to file its Data Requests by October 6, 2016, could be made accordingly.

20. Counsel for SWDE has represented by email, dated September 22, 2016, that SWDE does not oppose “a delayed filing [of Direct Testimony] that does not otherwise substantially disrupt the schedule.” Counsel for the DPA has represented by email, dated September 22, 2016, that the DPA does not oppose this request, assuming that SWDE does not oppose it and there is no more than a two-week delay. Of course, the length of any delay on this Docket’s Procedural Schedule will largely be determined by when SWDE provides the outstanding requested information to Staff. As of the morning of September 23, 2016, SWDE has committed to produce the requested information as soon as practicable. Staff trusts that SWDE will do so in good faith.

21. Alternatively, SWDE could elect to withdraw its Application entirely; submit a separate petition to the Commission seeking approval of its proposed CAM; and then, assuming the Commission approves the proposed CAM, file a new rate application based on the new, approved CAM. Similarly, SWDE could agree to stay proceedings in this Docket indefinitely until the proposed CAM is approved separately. Staff does not object to either course of action, but recognizes that a reasonable delay, as requested in this Motion, pending SWDE’s responses to Staff’s outstanding requests, in the current proceeding may be a more prudent and efficient way to proceed for all Parties, given the amount of time already invested in this Docket.



**B. The Hearing Examiner should compel SWDE to produce the information that Staff has requested.**

22. Staff acknowledges that a Motion to Compel may not be necessary in this instance because SWDE has agreed to provide the information requested at the September 23, 2016 meeting. Staff, however, still files this Motion for the purpose of keeping the Hearing Examiner apprised and as a placeholder to ensure that SWDE does provide the requested information as soon as practicable, so that the Docket may proceed.
23. SWDE has never objected to providing any of the information requested by Staff, nor has SWDE asserted that the requested information is not available.<sup>5</sup> Indeed, SWDE has agreed to provide the requested information.
24. Staff cannot move forward in its review of SWDE's Application or file Direct Testimony in this Docket without the requested information and respectfully requests that, if necessary, the Hearing Examiner compel SWDE to provide it as soon as possible.

Respectfully Submitted,

/s/ Brenda R. Mayrack

Brenda R. Mayrack (#5253)

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*Counsel to Public Service Commission Staff*

Dated: September 23, 2016

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<sup>5</sup> The Commission's Rules of Practice and Procedure require a party objecting to any discovery to do so within ten days of service. 26 *Del. Admin.* § 1001-2.6.7. No such objection has been registered by SWDE.

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INCREASE IN RATES AND FOR A )  
REVISION TO ITS GENERAL TARIFF )  
(FILED FEBRUARY 5, 2016)**

**CERTIFICATE OF SERVICE**

I, Brenda R. Mayrack, Esq., counsel for Public Service Commission Staff, do hereby certify that on September 23, 2016, I caused the foregoing MOTION TO COMPEL SUEZ WATER DELAWARE INC. TO RESPOND TO DISCOVERY AND INFORMATION REQUESTS AND TO STAY PROCEEDING to be served by electronic mail on all persons identified below and to be filed with the Delaware Public Service Commission using DelaFile.

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Respectfully Submitted,

/s/ Brenda R. Mayrack

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Dated: September 23, 2016